

**REPORT TO: PLANNING AND TRANSPORTATION COMMITTEE – 22 JANUARY 2001**

**REPORT ON: PLANNING AND TELECOMMUNICATIONS: CONSULTATION ON PROPOSED CHANGES TO PERMITTED DEVELOPMENT ARRANGEMENTS FOR TELECOMMUNICATIONS DEVELOPMENTS AND DRAFT NATIONAL PLANNING POLICY GUIDELINE (NPPG)**

**REPORT BY: DIRECTOR OF PLANNING AND TRANSPORTATION**

**REPORT NO: 3-2001**

## **1 PURPOSE OF REPORT**

1.1 The purpose of this report is to seek the Committee's views on consultation documents issued by the Scottish Executive Development Department on the subject of planning and telecommunications.

## **2 RECOMMENDATIONS**

- 2.1 It is recommended that the Committee
- a endorses the comments outlined in Section 7.8 of this report and in the Appendix; and
  - b remits the Director of Planning and Transportation to transmit the Council's views to the Scottish Executive and to COSLA and to report back to Committee on the outcome of the consultation exercise in due course.

## **3 FINANCIAL IMPLICATIONS**

3.1 There are no financial implications for the Council other than the additional planning fee income which would be generated by proposals which would require planning permission under these new arrangements if confirmed.

## **4 LOCAL AGENDA 21 IMPLICATIONS**

4.1 The draft proposals raise issues in relation to the following Local Agenda 21 Key Themes:

- Places, spaces and objects combine meaning and beauty with utility;
- Access to facilities, services, goods and people are not achieved at the expense of the environment and are accessible to all.

4.2 Telecommunications masts and other apparatus can be ugly structures on the streetscape and skyline and in particular in the open countryside. These changes to the legislation will, to a significant degree, give Councils powers to control and influence their design and environmental impact.

## **5 EQUAL OPPORTUNITIES IMPLICATIONS**

- 5.1 The application of the guidelines and the introduction of planning control for proposals which were previously permitted development will mean that Dundee's citizens will have the opportunity of commenting on proposals before the Council takes its decisions. Public participation in the planning process will thereby be extended across all sectors of the community.

## **6 BACKGROUND**

- 6.1 Reference is made to Article 1 of the Minutes of the Policy and Resources Committee of 11 October 1999 wherein the Council adopted a precautionary approach to the issue of telecommunications developments and remitted officers to make representations on its behalf to the Scottish Parliament's Transport and Environment Committee of Inquiry in the terms set out in the Chief Executive's Report 654/1999. This remit was fulfilled and the Committee reported to Scottish Ministers in May 2000. Following consideration of the Committee's recommendations, and the report of the Independent Expert Group on Mobile Phones (IEGMP) ("Mobile Phones and Health, May 2000), the Scottish Executive has now issued the following consultation papers requesting views by 16 February 2001:

- a Draft NPPG;
- b Draft Consultation Paper and Draft Statutory Instrument relating to proposed changes in permitted development arrangements;
- c Draft Regulatory Impact Statement.

- 6.2 Copies of the papers are available in the Members' Lounge and may be viewed on the Scottish Executive web site [www.scotland.gov.uk/planning/consult](http://www.scotland.gov.uk/planning/consult) . Over 700 organisations are being consulted and a working group of representatives from the industry, local authorities, the Royal Town Planning Institute and various Government departments has been involved in drawing up the draft proposals.
- 6.3 With this consultation timescale it is unlikely that the new controls will be implemented before the spring or early summer 2001.

## **7 SUMMARY OF THE DRAFT NPPG**

- 7.1 The main points raised in the draft NPPG consultation document are summarised below together with commentaries and recommendations as appropriate.

### General Purpose

- 7.2 The draft NPPG expresses the strong support of Government for the telecommunications industry. However, the NPPG addresses how masts, antennas and associated equipment can be introduced in ways which are more sensitive to the environment than has sometimes been the case.
- 7.3 The purpose of the policy is to ensure that the infrastructure can be developed in a way which continues to provide Scotland with world class telecommunications

services, while at the same time minimising the environmental impact of new, upgraded and replacement apparatus.

**The Council supports the achievement of an appropriate balance between the provision of efficient telecommunications services and their impact on the environment.**

- 7.4 The document acknowledges that there will be a need for an additional number of installations to meet the complete roll out of the second generation networks and perhaps 3-4 times as many to meet the technical requirements of the third generation network already auctioned.
- 7.5 Under proposed changes to the Permitted Development Order a range of developments will be brought under full planning control (See details in Para 8.3 below).

**The Council strongly supports the principle of introducing planning control for all new ground-based masts, irrespective of height but is disappointed that the provisions have not been extended to include all roof-based structures and other ground-based apparatus which cumulatively can result in a clutter which can have an adverse effect on the environment.**

#### Health Issues

- 7.6 On mobile phones and health, the IEGMP recommended a precautionary approach including a series of specific measures to be taken by the telecommunications regulating authorities (Para 25). This is justified by the group's findings that "the balance of evidence indicates that there is no general risk to the health of people living near to base stations" on the basis that exposures are expected to be small fractions of the public exposure guidelines of ICNIRP<sup>1</sup>.
- 7.7 In response to the IEGMP Report the Government has indicated that a national database of base stations and their emissions is to be established and maintained by the Radiocommunications Agency. Independent audits will be undertaken with priority being given to apparatus on or near to schools. There should also be clear exclusion zones around base stations, the provision of better public information, and further research into possible health effects.

**The Council notes the Government's position following the publication of the IEGMP report and supports the intended further research into these issues.**

#### i International Commission on Non Ionising Radiation Protection

- 7.8 However, the Government intends to require operators to comply with the stricter ICNIRP standards for all new installations. All new base stations will be expected to meet the ICNIRP guidelines and all applications for planning permission should be accompanied by confirmation that the apparatus, taken together with any already on site, will meet the guidelines when operational.
- 7.9 Health considerations and public concern are in principle material considerations in determining applications for planning permission. It is for the Council to decide on

the weight to be attached to those issues in individual cases. Where a planning authority decides to refuse planning permission on health or public concern grounds **it will need to supply authoritative scientific evidence that the standards are insufficient in that particular case.**

**Although the Draft Statutory Instrument is not absolutely clear on this issue, the Council anticipates that every application for planning permission and notification of a permitted development proposal must as a mandatory requirement be accompanied by a signed declaration of compliance with ICNIRP guidelines.**

ii Development Planning and Development Control

- 7.10 In respect of development planning the importance of policies relating to telecommunications is emphasised. Local plans should:
- a Present development control criteria including siting and design matters;
  - b Outline types of location where the most sizeable equipment should be located;
  - c Identify the designated areas as specified in the Permitted Development Order where there are to be no permitted development and set out specific policies which would apply;
  - d Identify other areas where "special care" should be exercised.

**These measures are supported and in Dundee's case this will be a matter for consideration in the forthcoming review of the Dundee Local Plan. Policy BE31 of the existing adopted Local Plan has proved to provide a satisfactory measure of control and has in many ways pre-empted the best practice suggested in the NPPG. (See below)**

- 7.11 Council's should consider preparing supplementary planning guidance to provide an interim basis for planning control pending the review of structure and local plans.

**In support of Policy BE31 of the adopted Dundee Local Plan the Council intends to approve supplementary planning guidance which will complement the local plan and NPPG. A report will be considered by the Council in February 2001.**

- 7.12 In exercising their development control responsibilities the industry and Councils are reminded of the importance of meaningful pre-application discussions. Planning authorities should be organised to deal with this issue. However, they should not question the need for any service which a proposed development will provide nor seek to prevent competition between operators.
- 7.13 Council's should consider the preparation of registers of sites, masts and buildings to aid the pre-application process.

- 7.14 In applying for planning permission operators and agents should provide Councils with a package of supplementary information to accompany their submissions. However, experience in the Dundee situation has shown that there is a need for the main operators and their various appointed agents to adopt a more pro-active approach to liaison arrangements with the Council in relation to their roll-out plans and the consideration of possible suitable alternative sites.
- 7.15 The impact of proposed installations on property values is not a material consideration as it is not for the planning system to protect the private interests of one person against the activities of another but to operate in the wider public interest on the sole basis of planning considerations.
- 7.16 Applications should be dealt with expeditiously and arrangements should be put in place to achieve this. Schemes of delegation should be adjusted to allow for delegated decisions to be made on applications which accord with planning policy.

**These points are welcomed and accepted as proposals for best practice. It is already the Council's practice to work in partnership with the industry and its advisers. Constructive pre-application discussions are encouraged and the Council already works with operators to promote the evaluation of alternative sites more appropriate in planning terms and to stimulate improvements in the design of structures, whether or not planning permission is required. A database is in place and is continuously maintained and updated with inputs from operators.**

## **8 SUMMARY OF PROPOSED CHANGES TO PERMITTED DEVELOPMENT ARRANGEMENTS**

- 8.1 The Draft NPPG is accompanied by a separate consultation document and draft Statutory Instrument which outline in detail the proposed changes to the permitted development regime.
- 8.2 The appendix to this report makes comments and recommendations on the questions posed in these documents and these together with the report as a whole should form the Council's response to the Scottish Executive.
- 8.3 In summary the main legislative proposals are as follows:
- It is not intended that any of the provisions should be applied retrospectively.
  - All new ground based masts would be subject to full planning control involving the submission of applications, owner and neighbour notification and the payment of fees.
  - Certain new installations of telecommunications apparatus on buildings will be subject to full planning control ie installations taller than 4 metres ie a degree of permitted development will remain.
  - All installations of telecommunications apparatus in national scenic area, national parks, conservation areas, historic gardens or designed landscapes, SSSI: or European sites will be subject to full planning control.

- Alterations to existing masts that increase the height or width by more than two metres will require planning permission.
- The installation of ground-based or roof-top radio equipment housing exceeding 3 metres in height or 90 cubic metres in volume (or its replacement or alteration beyond these limits) will require planning permission ie a degree of permitted development will remain.
- Controls will apply to the installation, alteration and replacement of apparatus other than “small antenna” on dwelling houses.
- Operators will be required to pre notify local authorities of developments still classed as permitted development (for information, no veto applicable) and to accompany this with declarations relating to compliance with non ionizing radiation guidelines (ICNIRP).
- Operators will be required to remove apparatus from permitted development sites when the need for the use ceases.

**Although the thrust of the proposed legislative changes are welcome, particularly in respect of new mast structures coming under planning control, it is of concern that not all roof top structures will require planning permission. In addition there are many aspects of the detail of the proposed legislation which is of concern or requires clarification and these are detailed in the Appendix to this report.**

## **9 DRAFT REGULATORY IMPACT STATEMENT**

- 9.1 This final consultation paper compares and contrasts the potential costs and benefits of the four principal options open to the Scottish Executive following the publication of the Transport and Environment Committee Report and the Stewart Report.
- 9.2 The only significant issue arising from this statement is the need for clarification of the fee required which will apply for new applications. The “plant and machinery” fee of £210 per 0.1 hectare up to a maximum of £10,500 may not be appropriate in respect of mast proposals which involve a relatively small area of land use compared to height of structure. The fee per application is unlikely to meet the cost of administering such applications. The Scottish Executive is asked to consider this matter further in the light of the different categories of proposal which may eventually require planning permission.

## **10 CONSULTATIONS**

- 10.1 The Chief Executive, Director of Finance, Director of Corporate Planning, Director of Support Services, Director of Environmental and Consumer Protection and Director of Economic Development have been consulted and are in agreement with the contents of this report.

**11 BACKGROUND PAPERS**

- 11.1 A Consultation Paper on Proposed Changes to Permitted Development Arrangements for Telecommunications Developments and Draft National Planning Policy Guideline. Scottish Executive Development Department. November 2000.

Draft National Planning Policy Guideline: Radio Telecommunications. Scottish Executive Development Department. November 2000.

Draft Statutory Instrument. The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2000.

Planning and Radio Telecommunications: Draft Regulatory Statement Scottish Executive Development Department. November 2000.

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Mike Galloway  
Director of Planning & Transportation

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Ian Mudie  
Building Quality Manager

IGSM/IAR/RJ

4 January 2001

Dundee City Council  
Tayside House  
Dundee

## APPENDIX

### Issues Raised in the Consultation Paper and by the Draft Statutory Instrument “The Town and Country Planning (General Permitted Development) (Scotland) amendment Order 2000.

The Consultation Paper explains the background to and justification for the NPPG and summarises the content of the Draft NPPG (See Section 7 of this report). It offers up numerous issues of detail for comment by consultees. These are outlined below together with a suggested Council response related to each.

1 Health Issues and a Precautionary approach (Paras 18 and 19)

*The draft NPPG encourages the rigorous application of a precautionary approach including the submission of ICNIRP compliance statements with telecommunications proposals.*

**The Council welcomes the emphasis given to the precautionary approach in relation to health matters and considers that the submission of statements by operators should be made a mandatory legal requirement as part of the application submission process.**

**In relation to the use of the planning process for the regulation of technical matters relating to potential health risks eg the enforcement of exclusion zones around schools, this is considered to be a matter outwith the scope of the planning process and should be a matter for the UK Government and the Scottish Executive to consider through the work of the Radio Communications Agency and for separate advice and guidelines to be issued to Councils.**

2 The introduction of full planning control for all new ground based masts. (Paras 20-22)

*This will result in the application of owner and neighbour notification arrangements resulting in the involvement of the public in the decision-making process. As a result it may be that operators will apply for permission to erect fewer but taller masts.*

**The Council, as outlined in its evidence to the Parliamentary Committee, supports this approach.**

3 Telecommunications Equipment on Buildings. (Paras 23-24)

*The Executive has not ruled out the need to introduce greater control of apparatus located on buildings. The consultation proposals indicate a level of permitted development. Effectively anything taller than 4 metres would not qualify as permitted development.*

**Although the Council welcomes the simplification of the rules in the Permitted Development Order it is concerned at the proposed level of permitted development. The cumulative impact of even modest structures on the roofs of buildings irrespective of their height can have an adverse effect on the skyline of the City eg City House, Woolworths, Broughty Ferry. Whilst the ability exists**



for some structures to be “camouflaged”, it is anticipated that this may prove ineffective in many cases without regulatory control.

The Council advocates the need for planning permission for all new apparatus, antenna and related structures (which are not considered to be “de minimis”) on buildings, irrespective of location or heights of building.

4 National Parks, National Scenic Areas and Conservation Areas (Paras 25 and 28)

The Council supports this proposal.

5 New Class 67(1) General Scope

*The scope of the terms of this class of permitted development is outlined. The “use of land in an emergency for a period of 6 months to station. and operate moveable telecommunications apparatus” is classed as permitted as in the present GPDO.*

**For enforcement purposes it is considered that the Order should define “emergency”, especially as this relaxation applies equally to conservation areas.**

6 New Class 67(2)(b), Ground Based Masts and Equipment

*This will permit the results of public participation and consultation to be taken into account as material considerations in the determination of applications.*

**The Order should confirm that this provision includes development associated with the mast ie housing, fencing, landscaping, access tracks etc. The requirements in relation to access ways should be clarified in relation to the provisions of New Class 67(2)(r). The meaning of the restrictions outlined in Class 67(2)(h) requires clarification as this is open to misinterpretation.**

**It is the Council’s interpretation that “mast” as defined in the Order includes “lamp post style” monopoles which are presently permitted development. If this is confirmed the permissive powers granted to operators under the New Roads and Street Works Act 1991 may require to be revisited to ensure that Councils as roads authorities are formally advised that the necessary planning permission has been obtained.**

7 New Class 67(2)(c): Extensions to existing masts

*Within specified limits, extensions to and relocations of existing ground-based masts will be permitted development.*

**Other than perhaps slimline aerials on top of existing masts extensions of 2 metres in any direction could potentially have damaging environmental effects making the appearance of an already ugly permitted development structure even more unsatisfactory. Similarly, the relocation of a mast even a short distance can have environmental implications for a neighbour. It is agreed that no permitted development should exist in this respect.**

8 New Class 67(2)(e): Equipment Housing

*The maximum permitted development limits for equipment housing associated with ground based masts is to be 3 metres in height or 90 cubic metres.*

**Equipment housing structures of these dimensions have the potential to be obtuse and unsightly structures. No justification of the dimensions is given. No similar dimensions are quoted for fencing.**

**The Council suggests that the planning application for the “mast” should extend to all accompanying equipment housing, fencing, landscaping and access arrangements.**

9 New Class 67(2)(f), (g), (i) and (j): Rooftop Apparatus and Equipment Housing

*Minimum permitted development limits are set of 4 metres (height) and 2 metres in any dimension for rooftop apparatus and 3 metres (height) and 30 cubic metres (volume) for rooftop housing units.*

**The individual and cumulative effect of rooftop apparatus can be damaging on any street scene. Justification for the dimensions quoted is not given.**

**The Council considers that the limits of permitted development for rooftop structures should be reduced.**

10 New Class 67(2)(k) and (l): Small Antenna

*Relates to relatively small equipment applied to a dwelling house or other building in connection with telephone systems operating on a point to fixed multi-point system.*

**Irrespective of other apparatus already present it seems reasonable to continue to allow a maximum of 1 such small antenna on dwellings and 2 on other buildings as at present.**

11 New Class 67(2), (n) and (o): Installation of apparatus other than on a building or other structure

*This mirrors the provisions of the existing Order and is now considered unnecessary in the light of the new provisions relating to new groundbased masts.*

**Agreed.**

12 New Class 67(2), (p) and (q): Installation, Alteration and Replacement of Antenna on a building

*Imposes a permitted development size limit for antenna (as opposed to apparatus) relating to the height of a building as follows:*

- Building over 15 metres high: - 2 metres in any direction; maximum of 8.
- Building under 15 metres high: 0.9 metres in any direction; maximum of 4

The Order would benefit from a definition of “antenna” (as opposed to “small antenna” and “apparatus” which are defined). The Council does not feel competent to suggest a definition. The provisions whilst accepted, make no concession to the extent of antenna already present.

The unrestricted addition of antenna on an existing groundbased mast (or presumably a rooftop apparatus) under permitted development rights is flawed. This could potentially ‘convert’ an acceptable mast design into an obtrusive and ugly structure.

The Council suggest the removal of permitted development rights relating to this issue.

13 New Class 679(3)(a) and (b): Notifications of Permitted Development proposals to Councils

*Councils are to be notified for information only. No veto or determination is applicable.*

This provision is welcomed and is similar to present licence obligations. This allows the opportunity for dialogue and for the confirmation or otherwise of permitted development status. However, this provision relates to ‘antenna’ and equipment only and should be extended to include all apparatus or structures either rooftop or groundbased.

14 New Class 67(4): Compliance with ICNIRP Guidelines

*Where exercising permitted development rights for one or more antenna the operator will have to provide the Council with a declaration that the equipment complies with the guidelines.*

This is welcomed but should be extended to cover all permitted development (antenna and apparatus).

It is noted that the Procedure Order is to be amended to apply these provisions to all applications for planning permission for the telecommunications developments. This too is welcomed. (See below)

15 New Class 67(4), (6), (7): Minimising the Visual Impact of Permitted Developments

*These are attempts to ensure that permitted developments are located so as to minimise their impact on the external appearance of the building. The terms also include provision for the removal of apparatus after use ceases and for the land, building or structure to be restored to its former condition.*

As these clauses relate to permitted developments and as Councils have no veto on notifications of such proposals, it is difficult to see how these provisions can be effective or enforceable prior to development taking place. It would be left for the Council to take enforcement action after the development had taken place if it considered that the development had been located so as to adversely affect the appearance of the building. There is no reference to the design of the proposal being an influencing factor.

Similarly, Councils, unless they were landlord, could not impose conditions to control removal of redundant permitted developments and the restoration of sites/buildings.

**Which body will confirm when the “need for” or “use of” a particular facility ceases?**

**Although these provisions are supported in principle, clarification of these issues is required.**

16 Notification of Civil Aviation Authority and MOD

*Views are welcomed as to necessity of notification where permitted development is to be located within 3km of an aerodrome.*

**This would appear to be a sensible courtesy proposal. (The Council, as the operator of an airport would be advised in any event and would have an input as consultee in respect of new mast proposals requiring planning permission.)**

17 Complementary Changes to Class 68 relating to developments by those who are not licenced telecommunications code system operators eg public or businesses (eg taxi firms)

*Minor changes to bring this Class into line with amended Class 67.*

**Supported.**

18 Complementary Changes to the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 as amended.

*Amendments are necessary to incorporate the requirement for the submission of ICNIRP compliance confirmation.*

**Supported. However this requirement should extend also to those proposals requiring planning permission. Applications should not be validated without the declaration.**

**It is also the Council’s view that each application for planning permission should be accompanied by a supporting statement by the applicant justifying the location and design of their proposal against alternatives considered. This requirement could be incorporated into the Order as a statutory requirement in all such applications prior to validation.**